

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NUVASIVE, INC.

Plaintiff,

v.

TIMOTHY DAY

Defendant.

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No. 1:19-cv-10800-DJC

LEAVE TO FILE GRANTED:
January 9, 2023

NUVASIVE, INC.’S REPLY TO DEFENDANT’S RESPONSE TO ITS
MOTION TO WITHDRAW DEPOSITED FUNDS

By and through its counsel of record, and pursuant to leave of Court granted January 9, 2023 (Doc. 275), NuVasive, Inc., files this Reply in support of its Motion to Withdraw Deposited Funds (Docs. 270, 271), and states that:

Without citing any relevant legal authority, Defendant’s Response (Doc. 273) asks the Court to stop NuVasive’s efforts to collect its judgment against Defendant even though Defendant failed to provide sufficient security. Of course, there is no merit to Defendant’s request. The Court’s August 3, 2022, Order required Defendant to post a bond or other security in the amount of \$1,905,085.48 by August 24, 2022, to stay execution of the judgment. Rather than doing so, Defendant paid \$1,731,441.35 to the Court on December 19, 2022, and claims that act should cause the Court to delay NuVasive’s collection attempts. (Doc. 273, p. 2). Even if Defendant’s contention that it may post security after the Court’s deadline for doing so is correct,¹ no legal authority supports his attempt to stay collection attempts by posting a bond less than what was ordered by the Court. Indeed, page 1 of Defendant’s Response acknowledges that “[T]he nature

¹ (See Def. Resp., Doc. 273, at pp. 1–2).

and the amount of the bond or other security is entrusted to the discretion of the court.” *Acevedo-Garcia v. Vera-Monroig*, 296 F. 3d 13, 17 (1st Cir. 2002).

In sum, the Court ordered Defendant to post a bond or other security in the amount of \$1,905,085.48 to stay collection efforts by August 24, 2022. (Doc. 264). The Court further held that if Defendant, “does not choose to do so by this date, then the Court will enter the writ of execution of the judgment” NuVasive sought. (Id.) Rather than comply with this Order, Defendant paid \$1,731,441.35 into Court one hundred seventeen (117) days after the Court-imposed deadline. As this amount does not sufficiently protect NuVasive, the Court should reject Defendant’s contention that the money constitutes security for the judgment, disburse the money to NuVasive, and allow NuVasive to continue its efforts to collect its judgment.

Respectfully submitted,

NUVASIVE, INC.

By its attorneys,

s/M. Thomas McFarland

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CERTIFICATE OF SERVICE

Pursuant to Local Rules 5.2(b)(2) and 5.4 of the Local Rules of the United States District Court for the District of Massachusetts, I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that paper copies will be sent by first-class mail to those indicated as non-registered participants, if any, on January 9, 2023.

s/M. Thomas McFarland
